

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

KIMBERLY ASHTON, )  
Plaintiff, ) Civil Action No. 3:16-cv-02831  
v. ) Judge Crenshaw  
BANK OF AMERICA, N.A., ) Magistrate Judge Holmes  
Defendant. )

**MOTION TO DISMISS**

Defendant Bank of America, N.A. (“BANA”), by and through counsel, moves to dismiss this lawsuit pursuant to Fed. R. Civ. P. 12(b)(6) because Plaintiff’s Complaint fails to state any claim upon which relief can be granted. Specifically, all of Plaintiff’s claims are barred by 31 C.F.R. § 210.8(b), which prohibits financial institutions from being held liable to third parties when a federal agency errs in sending an electronic fund transfer—as was the case here. Further, each claim, individually, fails to meet the substantive pleading requirements under state and federal law.

WHEREFORE, BANA respectfully requests that the Court grant its Motion to Dismiss, dismiss this lawsuit with prejudice, and grant such further relief as it deems appropriate.

Dated this 9th day of November, 2016.

Respectfully Submitted,

/s/ H. Frederick Humbracht  
H. Frederick Humbracht (BPR No. 2993)  
Brian R. Epling (BPR No. 34728)  
BRADLEY ARANT BOULT CUMMINGS LLP  
Roundabout Plaza  
1600 Division Street, Suite 700  
Nashville, TN 37203

615.252.2340 (phone)  
615.248.3030 (fax)  
[rhumbracht@bradley.com](mailto:rhumbracht@bradley.com)  
[bepling@bradley.com](mailto:bepling@bradley.com)

*Counsel for Defendant  
Bank of America, N.A.*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 9, 2016, a copy of the foregoing was filed electronically with the Clerk's office by using the CM/ECF system and served electronically and/or via first-class U.S. mail, postage prepaid, upon all counsel as indicated below. Parties may also access this filing through the Court's ECF system.

Christopher V. Boiano, Esq.  
Boiano & Boiano, LLC  
115 Shivel Drive  
Hendersonville, TN 37075

/s/ H. Frederick Humbracht